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13 **IN THE SUPREME COURT**  
14 **STATE OF ARIZONA**

15 PETITION TO AMEND COMMENT  
16 [3] ER 8.4, RULE 42, ARIZONA  
17 RULES OF THE SUPREME COURT

Supreme Court No. R-12-0018

**Arizona Black Bar, Arizona Asian  
American Bar Association, and  
South Asian Bar Association of  
Arizona’s Comment on Petition to  
Amend Comment [3] ER 8.4, Rule  
42, Arizona Rules of the Supreme  
Court**

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20 The Arizona Black Bar, Arizona Asian American Bar Association, and South  
21 Asian Bar Association of Arizona respectfully join the comment filed by the State Bar  
22 of Arizona’s (“SBA”) dated May 7, 2012 in opposition to the *Petition to Amend*  
23 *Comment [3] to ER 8.4, Rule 42, Arizona Rules of the Supreme Court* submitted by  
24 Cathi Herrod on January 10, 2012 (the “Herrod Petition”). In addition to those  
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1 reasons set forth in the SBA’s Comment, the Arizona Black Bar, Arizona Asian  
2 American Bar Association, and South Asian Bar Association of Arizona also oppose  
3 the Herrod Petition for at least the following reasons.

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5 First, antidiscrimination based on social identities is and should be a core tenant  
6 of legal ethics in Arizona. Arizona lawyers should be held accountable for their  
7 prejudices and biases that negatively affect the administration of justice. Such  
8 prejudices and biases threaten the public’s perception of lawyers and contradict the  
9 fundamental premise of our Ethical Rules – lawyers should be trusted to govern  
10 themselves.  
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13 As written, ER 8.4 provides a mechanism by which lawyers can be disciplined  
14 for improper biases and prejudices that are made manifest and adversely affect the  
15 administration of justice. The language in Comment [3] is an important signal to  
16 lawyers, future lawyers, and to the public we serve that Arizona lawyers are expected  
17 to take actions that protect the integrity of our legal system, not to erode it. Indeed,  
18 the Preamble to the Ethical Rules provides, “a lawyer should further the public’s  
19 understanding of and confidence in the rule of law and the justice system because  
20 legal institutions in a constitutional democracy depend on popular participation and  
21 support to maintain their authority.” *See* Preamble to ER, at ¶ [6].  
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1           Second, the harm against which Comment [3] mitigates is specific, and the list  
2 of certain enumerated classes within the comment is indicative of the progress our  
3 society has made with respect to equal rights and antidiscrimination. The Comment  
4 addresses a lawyer's prejudice or bias against an individual's social identities.  
5 Specifically, the Comment precludes improper manifestations of bias or prejudice  
6 based upon race, sex, religion, national origin, disability, age, sexual orientation,  
7 gender identity, or socioeconomic status. The Herrod Petition suggests the list is  
8 under inclusive, and her proposed solution is to eradicate these categories entirely.

11           Herrod may be correct in her belief that the list is under inclusive. The Arizona  
12 Black Bar, Arizona Asian American Bar Association, and South Asian Bar  
13 Association of Arizona do not, however, believe the answer is simply to get rid of the  
14 list. Instead, Arizona lawyers should ensure our approach to antidiscrimination is  
15 inclusive and work diligently to protect against biases and prejudices that may  
16 compromise the integrity of and the public's confidence in our legal profession. This  
17 process takes concerted effort, dialog, and collaboration. Nevertheless, the Arizona  
18 Asian American Bar Association, South Asian Bar Association of Arizona, and  
19 Arizona Black Bar believe that with sufficient time and the proper effort, a better  
20 resolution than the one proffered by the Herrod Petition will result.

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7 /s/ Kami M. Hoskins